

Submission by



to the

Environment Select Committee

on the

**Resource Management (Consenting and Other System Changes)
Amendment Bill**

February 2025

**RESOURCE MANAGEMENT (CONSENTING AND OTHER SYSTEM CHANGES)
AMENDMENT BILL
SUBMISSION BY BUSINESSNZ¹**

1.0 EXECUTIVE SUMMARY

- 1.1 BusinessNZ welcomes the opportunity to make a submission on the Resource Management (Consenting and Other System Changes) Amendment Bill (“the Bill”) and recommends that the Bill proceeds.
- 1.2 The Bill proposes targeted changes to the resource management system with the objective of reducing the regulatory burden on key sectors.
- 1.3 BusinessNZ notes that the Government is committed to further reforms of Resource Management later this Parliamentary term, with new resource management laws (“Phase 3”) based on the guiding principle of the enjoyment of property rights. BusinessNZ supports this approach but accepts that it is necessary to remove unnecessary roadblocks to growth in the meantime.
- 1.4 A fundamental principle on which a market economy such as New Zealand is based is that property owners should have relative security in their property rights with the right to use their property in the manner they choose (while respecting the rights of other property owners).
- 1.5 Investors, too, must have confidence that any assets they purchase or improve upon will be safe from confiscation or unreasonable restrictions, or alternatively, that they will be compensated for any erosion of property rights. If this is not the case, there will be limited incentive for anyone to undertake long-term investment.
- 1.6 While BusinessNZ broadly supports the changes proposed in this Bill, there are three specific issues which BusinessNZ wishes to comment on.

These are:

1. Ensuring a degree of consistency with proposed “Phase 3” reforms;
2. Infrastructure and Energy; and
3. Natural Hazards and definition of ‘significant’ risks.

¹ Background information on BusinessNZ is attached as Appendix 1.

- 1.7 Given the diversity of our membership, some members and sectors will have specific issues they wish to comment on the Bill. For example, some members have commented on the absence of water services within the definition of long-lived infrastructure, when they should be included, given their role in enabling housing and wider industry growth. We have therefore encouraged individual members and sector representatives to make their own submissions raising those issues specific to their areas of interest.

RECOMMENDATIONS

BusinessNZ **recommends** that:

The Bill proceeds.

WITHOUT PREJUDICE TO THE PRINCIPAL RECOMMENDATION ABOVE:

BusinessNZ **recommends** that:

Early consideration be given to the likely contents of the Phase 3 reforms, so this Bill can be consistent with what is widely assumed to be a more permissive regime without discrimination between types of commercial investment undertaken by private parties, provided the cost and benefits of such investment are largely internalised.

BusinessNZ **recommends** that:

Consideration be given to extending resource consents for all long-life assets beyond 35 years to provide for greater investment certainty, while at the same time providing for greater flexibility to trade and transfer resource consents between consenting parties where appropriate to allow resources to flow to their highest valued use.

BusinessNZ **recommends** that:

Water services be included within the definition of long-lived infrastructure given their importance in enabling housing and broader industry growth.

BusinessNZ **recommends** that:

provided emissions are adequately covered by the Emissions Trading Scheme (ETS), authorities should be agnostic as to which specific energy projects are to be supported.

BusinessNZ **recommends** that:

“Significant” risk needs to be defined clearly (Clause 37) in order to ensure consistent decision-making across regions and regulatory bodies.

BusinessNZ **recommends** that:

To encourage efficient investment in natural resource and infrastructure development for the economic, social, environmental and cultural well-being of current and future generations of New Zealanders, the Select Committee consider inserting a clause into the Bill:

- a. recognising the importance of upholding property rights to encourage efficient investment and determining how existing use rights will be treated, and**
- b. introducing a compensation regime for regulatory takings to encourage better decision-making from regulators when affecting private property in the public interest.**

2.0 GENERAL DISCUSSION

2.1 BusinessNZ is broadly supportive of the proposals contained in the Bill.

2.2 It is noted that the intent of this Bill is to progress the Government's priorities, including:

- Making it easier to consent new infrastructure, including for renewable energy, building houses, and enhancing the primary sector;
- Cutting red tape to unleash investment in renewable energy for NZ to meet its emission reduction targets;
- Making the medium density residential standards (the MDRS) optional for councils, with the need for councils to ratify any use of the MDRS, including existing zones;
- Implementing the Going for Housing Growth policy to unlock land for housing, build infrastructure, and allow communities to share the benefits of growth;
- Facilitating the development and efficiency of ports, and strengthening international supply networks;
- Simplifying the planning system.

2.3 There are three specific issues in the Bill which BusinessNZ wishes to comment on.

These are:

1. Ensuring a degree of consistency with Phase 3 reforms;
2. Infrastructure and Energy; and
3. Natural Hazards and significant risks.

Ensuring consistency with potential Phase 3 Reforms

2.4 As noted earlier, the Government is committed to further reforms of the RMA later this Parliamentary term, with new resource management laws based on the guiding principle of the enjoyment of property rights. BusinessNZ supports this approach and accepts that it is necessary to remove unnecessary roadblocks to growth in the meantime – hence our broad support for the Bill.

2.5 Notwithstanding the above, it is important that consideration be taken of what might be contained in the Phase 3 reforms so that this Bill is consistent with what is widely assumed to be a more permissive regime which does not discriminate between commercial investment undertaken by private parties provided the cost and benefits of such investment are largely internalised e.g.

through the use of the Emissions Trading Scheme in respect to carbon emissions.

BusinessNZ **recommends** that:

Early consideration be given to the likely contents of the Phase 3 reforms, so this Bill can be consistent with what is widely assumed to be a more permissive regime without discrimination between types of commercial investment undertaken by private parties, provided the cost and benefits of such investment are largely internalised.

Infrastructure and Energy

- 2.6 While BusinessNZ supports making it easier (and faster) to achieve consenting for renewable energy and provide greater certainty and reducing costs by having a default 35-year duration for time-limited consents for renewable generation (including hydro and geothermal) and long-lived infrastructure, it is assumed that under Phase 3 reforms, regulators should be indifferent towards the types of investment proposals undertaken by private sector investors, provided the costs and benefits of such actions are largely internalised in respect to e.g. pollution and/or natural hazards which have the potential to impact on third parties.
- 2.7 While hydro-generation and other large users of water e.g. irrigation do not have the right to own a water resource, a resource consent does allow the user to take, dam or divert water and to that extent is a property right and is valued as a right, particularly where increasing demand for water exists. This is reflected in large infrastructure investments such as electricity generation and large-scale irrigation schemes. In many cases the value of consents has been capitalised into land values.
- 2.8 Individual users need **(i) Security of Property Rights** and **(ii) Clear Specification** of water use.

Security of Property Rights: a water right is provided for a significant period of time ensuring confident investment but with the ability to trade such rights where appropriate.

Clear specification: any constraints on water use are well-defined, publicly known, and not subject to arbitrary change. e.g. any risk sharing arrangements are clearly defined.

- 2.9 The ability to transfer (or trade) a right to take water is fundamental to ensuring an efficient longer-term allocation of resources. It may also help to minimise any possible conflict between existing and potential abstractive water users by ensuring water flows to its most highly valued uses (either through short- or long-term lease arrangements or sale).
- 2.10 Notwithstanding the above, it is acknowledged that different catchments have different flow characteristics, different hydrologies as well as different demands on water use. A sound water policy regime will need to balance the need for certainty for water users through better national level direction and consistency in management practices across catchments, whilst allowing water management authorities to address specific local problems with local solutions.

BusinessNZ **recommends** that:

Consideration be given to extending resource consents for all long-life assets beyond 35 years to provide for greater investment certainty, while at the same time providing for greater flexibility to trade and transfer resource consents between consenting parties where appropriate to allow resources to flow to their highest valued use.

BusinessNZ **recommends** that:

Water services be included within the definition of long-lived infrastructure given their importance in enabling housing and broader industry growth.

- 2.11 The 'energy trilemma' - the balancing of affordability, security and environmental sustainability outcomes - has been embedded into the NZ energy conversation for at least a decade now.
- 2.12 Notwithstanding this, energy systems are complex and interconnected. The output of these systems is energy at a given price, with a certain level of reliability within a particular range of environmental impacts. New Zealand's energy sector has developed over recent years a hard-won track record of supplier and technology neutrality and has avoided costly subsidies or regulations for new technologies. This has resulted in the relatively diverse and robust energy supply system we currently have. However, as recent events show, NZ must ensure we have flexible options to ensure adequate for 'dry' years and for when the wind is not blowing.

- 2.13 BusinessNZ supports New Zealand's net-zero carbon target. Climate change is a global problem. New Zealand contributes to this problem and has a responsibility to address it. New Zealand's businesses have a crucial role to play in achieving the reductions sought under the Paris Agreement.
- 2.14 Change in New Zealand is already well underway, with the government, policymakers, businesses, and individuals taking decisive action to reduce emissions. Policies should communicate clear investment signals and help eliminate regulatory barriers. The actions and policies of the government must therefore be cost-effective, evidence-based, and consider all trade-offs while safeguarding economic growth and living standards.

BusinessNZ **recommends** that:

provided emissions are adequately covered by the Emissions Trading Scheme (ETS), authorities should be agnostic as to which specific energy projects are to be supported.

Natural Hazards

- 2.15 It is noted that the Bill introduces new regulation-making powers to support emergency responses and recovery efforts. It also clarifies and reinforces councils' ability to decline consents or impose conditions when significant natural hazard risks are present. Plan changes that introduce new natural hazard rules will now have immediate legal effect.
- 2.16 BusinessNZ considers that it is important that "significant" natural hazard risk is defined (currently it is not) which could lead to the taking of property (or at least regulatory takings in the public interest) without any form of compensation.
- 2.17 Notwithstanding the above, virtually every activity has spillover consequences not necessarily justifying government involvement. For government involvement to be justified, the externalities must be shown to be particularly large so that government intervention is warranted.
- 2.18 As a general principle, individuals and companies should bear the full cost of their behaviour (i.e., costs should be internalised). Over-consumption of resources is always likely if costs can be shifted onto third parties. Management of land use and risk is no different. If individuals and companies are to make rational decisions about land use, they should ideally bear the costs (and gain

the benefits) associated with specific options/outcomes. If, on the other hand, individuals and companies are forced to pay a greater amount than any cost they bring into effect, the outcome will either be a more expensive product and/or reduced commercial activity, with associated flow-on implications for employment etc.

- 2.19 It is important to understand up front that there is an optimal amount of resource which should be utilised in reducing risk arising from natural hazards, just as there is an optimal amount of resource that should be spent on crime prevention, health interventions etc. The crucial and undeniable fact is that resources are limited while risk can often not be completely eliminated or not, at least, without great cost. It might be possible to reduce risk, but beyond a certain point the marginal cost of acting becomes progressively higher, while the potential returns reduce. Therefore, it pays for companies and individuals to invest in risk minimisation strategies only up to the point at which the marginal cost of taking action equals the marginal benefit.
- 2.20 The economic perspective of risk stresses two ideas:
- More resources, including time and money, are needed to reduce risk; and
 - People (through their actions) have a desired level of risk well short of zero in view of what the increased cost would require them to give up or for some other specific consideration.
- 2.21 It is not a case of eliminating risk; to do so would effectively be to close down all productive activity.
- 2.22 A Report for MfE by consulting firm Sapere (11 August 2022) made the very useful point that, "*There is also no specific risk tolerance criteria in New Zealand to determine when a particular annual loss-of-life risk is acceptable or not, making it more difficult to determine the point at which risk reduction, such as managed retreat, is required (p.1).*"²
- 2.23 There is no clear definition of what 'significant' risk is in the Bill. It is fundamental that risk to property or life should be relatively consistent across the board to ensure the optimal allocation of resources while providing for local communities and individuals to make decisions based on their own personal circumstances.

² Assessment of Mechanisms of Managed Retreat – A report prepared for MfE by consulting firm, Sapere (11 August 2022)

- 2.24 Most if not all major infrastructure projects already undergo a comprehensive and very specialised risk assessment undertaken by a team of experts as part of business case process.
- 2.25 Given regulators will have an inbuilt tendency to minimise their own risk since costs can be pushed on to third parties (businesses and households), a very cautious approach to new development is likely to be taken, stifling economic growth and making the price of available infrastructure (housing etc) that much more expensive as communities, individuals and businesses compete for less available development land.
- 2.26 The clear objective of resource management law should be to uphold property rights allowing individuals and businesses to develop and utilise their land as they see fit (i.e., permitted activity), provided this does not unduly interfere with others' legitimate business activity or personal rights. Property rights should be upheld, not degraded through inappropriate and uncertain control by centralised decision-makers.
- 2.27 Current resource management legislation makes no allowance, other than in some specific instances, for the payment of compensation in recompense for regulatory takings (or for a reduction in private property rights in the public interest). This is a substantial flaw and serves (and will continue to serve) to depress necessary economic activity.³
- 2.28 The persistent and ongoing departure from the principle of consent to the diminution of private interests in the name of the public interest, and the provision of compensation when this occurs, has created an enduring and deep-seated dissatisfaction among the business community with the previous Resource Management Act (and its successor, the Natural and Built Environment Act, since repealed).
- 2.29 Regulatory takings should not be legislatively condoned. Instead, as noted above, BusinessNZ believes that core to the issue of property rights, where regulatory takings are contemplated, is the acknowledgement of the right to compensation. As a general principle, property rights should not be diminished without compensation. This is a long-held view. BusinessNZ considers the presumption of compensation to be a vital economic system check and balance.

³ If considering this statement in demand and supply terms, a zero price on regulation is always going to mean the demand for regulation will be high while the voluntary supply of property rights in return will be very low.

- 2.30 The need to compensate for regulatory takings is hardly a new or novel conclusion in public policy terms. Over recent years the Crown, in the process of regulating private property rights in the perceived public interest, has at least accompanied regulation with compensation. This has occurred most notably in the areas of carbon emissions and fisheries management.
- 2.31 If local authorities were required to provide compensation for regulatory takings BusinessNZ would expect them to take more care when regulating private interests in the public interest. It might then be expected that the need for regulatory takings would be low, perhaps based initially on one or two test cases.
- 2.32 Claims for compensation would need to rest on more than an assertion that land use had been impaired but on evidence sufficient to support a claim of changed land use.
- 2.33 The claims process would not be costless and both parties would need to assess the value of the compensation sought, the likelihood of gaining (or paying) compensation and the cost of participation. Rules such as requiring the losing party to pay the other's costs would contribute to getting the incentives for claiming or opposing compensation right.
- 2.34 Finally, BusinessNZ recognises that in some cases, the transaction costs associated with determining the winners and losers involved in a regulatory taking might be disproportionately high, making the payment of compensation impractical. This possibility reinforces the importance of having both a sound process (including robust decision-making requirements) and appeal rights.

BusinessNZ **recommends** that:

"Significant" risk needs to be defined clearly (Clause 37) in order to ensure consistent decision-making across regions and regulatory bodies.

BusinessNZ **recommends** that:

To encourage efficient investment in natural resource and infrastructure development for the economic, social, environmental and cultural well-being of current and future generations of New Zealanders, the Select Committee consider inserting a clause into the Bill:

- a. recognising the importance of upholding property rights to encourage efficient investment and determining how existing use rights will be treated, and**
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Appendix One - Background information on BusinessNZ



The BusinessNZ Network is New Zealand’s largest business organisation, representing:

- Business groups EMA, Business Central, Business Canterbury, and Business South
- BusinessNZ policy and advocacy services
- Major Companies Group of New Zealand’s largest businesses
- Gold Group of medium-sized businesses
- Affiliated Industries Group of national industry associations
- ExportNZ representing New Zealand exporting enterprises
- ManufacturingNZ representing New Zealand manufacturing enterprises
- Sustainable Business Council of enterprises leading sustainable business practice
- BusinessNZ Energy Council of enterprises leading sustainable energy production and use
- Buy NZ Made - country of origin licensing organisation for NZ-made products, NZ-grown ingredients, and NZ-coded software services

The BusinessNZ Network is able to tap into the views of over 76,000 employers and businesses, ranging from the smallest to the largest and reflecting the make-up of the New Zealand economy.

The BusinessNZ Network contributes to Government, tripartite working parties and international bodies including the International Labour Organisation (ILO), the International Organisation of Employers (IOE) and Business at OECD (BIAC).

